

# **EXHIBIT 40**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW JERSEY

- - -

IN RE: JOHNSON & :  
JOHNSON TALCUM POWDER :  
PRODUCTS MARKETING, : MDL  
SALES PRACTICES, AND : NO. 16-2738  
PRODUCTS LIABILITY : (FLW) (LHG)  
LITIGATION :  
:   
THIS DOCUMENT RELATES :  
TO ALL CASES :  
:

Volume I

- - -

June 28, 2018

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Videotaped deposition of  
DONALD HICKS, taken pursuant to notice,  
was held at the law offices of Drinker  
Biddle & Reath, 105 College Road East,  
Princeton, New Jersey, beginning at 9:31  
a.m., on the above date, before Michelle  
L. Gray, a Registered Professional  
Reporter, Certified Shorthand Reporter,  
Certified Realtime Reporter, and Notary  
Public.

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<p style="text-align: right;">Page 78</p> <p>1                   correct.</p> <p>2 BY MS. O'DELL:</p> <p>3                   Q. And if you'll turn to the</p> <p>4 next page. The acceptable limit for</p> <p>5 lead, for example, was ten parts per</p> <p>6 million. Am I reading that correctly?</p> <p>7                   A. Yes, you are.</p> <p>8                   Q. And what does NMT stand for?</p> <p>9                   A. Not more than.</p> <p>10                  Q. Not more than. And so</p> <p>11 Johnson &amp; Johnson specified that it's</p> <p>12 talc would not have more than ten parts</p> <p>13 per million of lead, correct?</p> <p>14                  A. That is correct.</p> <p>15                  Q. And similarly Johnson &amp;</p> <p>16 Johnson dictated that its talc should not</p> <p>17 have more than two parts per million of</p> <p>18 aluminum?</p> <p>19                  A. That is correct.</p> <p>20                  Q. And the maximum amount of</p> <p>21 arsenic that was allowed in its talc,</p> <p>22 according to the specification, was two</p> <p>23 parts per million, correct?</p> <p>24                  A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1                   for -- at Johnson &amp; Johnson for the</p> <p>2 drafting of this raw materials</p> <p>3 specification?</p> <p>4                   A. Primary responsibility was</p> <p>5 with the research and development team.</p> <p>6                   Q. Did the -- strike that.</p> <p>7                   Who in the research and</p> <p>8 development team was primarily</p> <p>9 responsible for raw material</p> <p>10 specifications for talc?</p> <p>11                  A. Individual?</p> <p>12                  Q. Yes.</p> <p>13                  A. At this point in time there</p> <p>14 was a scientist. His name was Curtis</p> <p>15 Lee.</p> <p>16                  Q. And so Mr. Lee would have</p> <p>17 had responsibility for developing this</p> <p>18 raw materials specification, true?</p> <p>19                  A. In collaboration with both</p> <p>20 Imerys and other members within Johnson &amp;</p> <p>21 Johnson, yes. He was the primary owner</p> <p>22 of the document.</p> <p>23                  Q. Were you involved in the</p> <p>24 drafting of these specifications?</p>
<p style="text-align: right;">Page 79</p> <p>1                  Q. The limit of chromium was .5</p> <p>2 part per million, correct?</p> <p>3                  A. Yes.</p> <p>4                  Q. And the limit of nickel was</p> <p>5 ten parts per million?</p> <p>6                  A. Yes.</p> <p>7                  Q. Then you'll see 2.33</p> <p>8 addresses asbestos, correct?</p> <p>9                  A. Yes.</p> <p>10                 Q. And Johnson &amp; Johnson</p> <p>11 required that talc be tested using CTFA</p> <p>12 J4-1, correct?</p> <p>13                 A. You had the option of using</p> <p>14 the either current USP method or CTFA</p> <p>15 Method J4-1.</p> <p>16                 Q. And in terms of asbestos</p> <p>17 being tested by transmission electron</p> <p>18 microscope, the specific method to be</p> <p>19 employed -- and this was required by J&amp;J,</p> <p>20 was TM, meaning test method, 7024,</p> <p>21 correct?</p> <p>22                 A. Yes.</p> <p>23                 Q. I'll ask you to turn to Page</p> <p>24 8 of 15. Mr. Hicks, who was responsible</p>	<p style="text-align: right;">Page 81</p> <p>1                  A. Yes. I was part of the</p> <p>2 team.</p> <p>3                  Q. And what input did you have</p> <p>4 in the specification? What was your</p> <p>5 responsibility?</p> <p>6                  A. Alignment. Indicating</p> <p>7 that -- reviewing all the information to</p> <p>8 make sure that it was correct from a</p> <p>9 quality and compliance perspective,</p> <p>10 looking at the sampling process, names of</p> <p>11 the companies that were being used, and,</p> <p>12 you know, other related information, such</p> <p>13 as the approved independent testing</p> <p>14 laboratory name, those kinds of topics.</p> <p>15                 Q. Looking at Page 8 of 15,</p> <p>16 you'll see the testing frequencies and</p> <p>17 requirements.</p> <p>18                 Do you see that?</p> <p>19                 A. Yes.</p> <p>20                 Q. Let's go through this table.</p> <p>21 You see Stage I is ore. I'm assuming</p> <p>22 that means that's ore that's being taken</p> <p>23 from the mine in China, correct?</p> <p>24                 A. That's correct.</p>